

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
October 2, 2003**

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, October 2, 2003, beginning at 2:00 P.M. at the Town of Warrenton Police Department, 333 Carriage House Lane, Warrenton, Virginia. Members present were Mrs. Peg Mailler, Chairperson; Mr. Eugene Lofdahl, Vice-Chairperson; Mr. John Meadows, Secretary; Mr. James W. VanLuven; Mr. Maximilian Tufts, Jr.; Mr. Mark Rohrbaugh. Also present were Ms. Tracy Gallehr, Assistant County Attorney; Ms. Kimberley Johnson, Zoning Administrator; Mr. Fred Hodge, Assistant Zoning Administrator; and Mrs. Debbie Dotson, Office Associate III.

MINUTES: On a motion made by Mr. VanLuven and seconded by Mr. Tufts, the Board of Zoning Appeals voted to make the following corrections to the September 4, 2003 minutes:

- on page 2, the finding “the property was not acquired in good faith” should be deleted;
- on page 11, the word “state” in the seventh paragraph should be changed to “stated”.

The motion carried unanimously.

On a motion made by Mr. Lofdahl and seconded by Mr. Meadows, the Board of Zoning Appeals voted to approve the corrected minutes of the September 4, 2003 meeting.

The motion carried unanimously.

LETTERS OF NOTIFICATIONS AND PUBLIC NOTICE: Mr. Hodge stated that to the best of his knowledge, the cases before the Board of Zoning Appeals for a public hearing had been properly advertised, posted, and letters of notification sent to adjoining property owners. Mrs. Dotson read the Public Hearing Protocol.

SPECIAL PERMIT #52217, FAUQUIER SPCA, INC. (OWNERS)

Applicants are requesting special permit approval to enlarge an existing animal shelter and to amend a special permit condition, PIN #7902-51-8200, located at 9350 Rogues Road, Cedar Run District, Casanova, Virginia.

Mr. Hodge stated that the BZA held the public hearing and made a site visit last month. Mr. Hodge stated that during the deliberations the Board felt they needed more information, particularly additional drawings. He stated that the Board has a letter from the applicant stating that they needed additional time to provide the information and have respectfully asked to defer the continued public hearing till the November 6, 2003 meeting.

On a motion made by Mr. Meadows and seconded by Mr. Lofdahl; the BZA voted to table the special permit until November 6, 2003.

SPECIAL PERMIT AND VARIANCE #52306, RICHARD & EDNA KING (OWNERS)

Applicants are requesting special permit approval to operate a family-owned dog care facility and a variance, PIN #7903-88-1079, located at 5042 Old Auburn Road, Center District, Warrenton, Virginia.

Mr. Hodge stated that a BZA site visit was made earlier today, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes. The staff report does not reflect the revised building size design. The applicant submitted a revised building design of 60' x 28' not 60' x 30'; therefore, the variance being requested is correct. Mr. Hodge noted that site plan approval would be necessary if special permit is approved.

Mr. King, applicant, along with their daughter, noted agreement with the staff report.

Ms. Kristin Clare, adjoining property owner, voiced concerns regarding the approval. She stated there would obviously be a problem with a large quantity of dogs in a very narrow lot. She stated concerns about noise, smell, and health impacts on neighboring dogs. She also stated concern about the access into the site, noting the curve of the road would cause problems or even accidents. Ms. Clare noted that the elevation of the property varied quite a bit, contrary to the staff report. She stated that there is a creek behind the property and that runoff would be an issue.

Ms. Mabel Lanham, adjoining property owner, noted that she shared the same concerns as Ms. Clare.

Mr. King stated that building would be sound proof. He also stated that there would only be about 4 or 5 dogs in the outside run at any time.

Ms. Mailler asked Mr. King about plans for parking. Mr. King pointed out the parking area shown on the plans. Ms. Mailler noted that VDOT would be involved during the site plan process.

Mr. Meadows noted that he shared concerns about the entrance and parking. He stated that VDOT may require Mr. King to upgrade the entrance. Mr. Meadows addressed Mr. Hodge about his belief that the drainfield is located directly underneath where the building would be. Mr. Hodge agreed that issue should be addressed now, including identifying and protecting the reserve drainfield area.

Mr. Meadows stated that he did not think this was the place for a kennel. Mr. Rohrbaugh noted agreement with Mr. Meadows. Mr. Rohrbaugh stated he has concerns about noise because of the small size of the lot. He also stated concerns about the sight distance at the entrance/exit.

On a motion made by Mr. Rohrbaugh and seconded by Mr. Lofdahl, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to deny the special permit with the following findings:

1. The proposed use will adversely affect the use or development of neighboring properties.
2. The use will not be compatible with the neighborhood in which it is to be located.
3. The applicant has other reasonable use of his property.

The motion carried unanimously.

On a motion made by Mr. Rohrbaugh and seconded by Mr. VanLuven, the Application Number was corrected to read No. 52306. The motion carried unanimously.

On a motion made by Mr. Tufts and seconded by Mr. Meadows, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to deny the variance with the following findings:

1. Strict application of the Ordinance would not effectively prohibit or unreasonably restrict use of the property.

The motion carried unanimously.

SPECIAL PERMIT #52533, RODNEY WILLIAM WHITNEY (OWNER) AND SHERRY L. STILES (APPLICANT)

Applicant is requesting special permit approval to operate a bed and breakfast operation on the property, PIN #6001-34-8132, located at 1788 Fiery Run Road, Marshall District, Linden, Virginia.

Mr. Hodge stated that Ms. Stiles has requested the hearing be postponed until the November meeting because of issues related to the purchase of the property.

On a motion made by Mr. VanLuven and seconded by Mr. Lofdahl, the BZA voted to table the special permit until November 6, 2003.

The motion carried unanimously.

SPECIAL PERMIT #52537, LOUIZAS & ALEXSANDRA PAPADOPOULOS (OWNERS)

Applicants are requesting special permit approval to construct a dwelling 38.5 feet in height wherein the Zoning Ordinance allows 35 feet in the RA zoning district, PIN

#6970-69-2675, located off of Route 651, Lees Mill Road, Lee District, Warrenton, Virginia.

Mr. Hodge stated that a BZA site visit was made earlier today, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mr. Papadopoulos, applicant, appeared at the meeting and noted agreement with the staff report.

On a motion made by Mr. VanLuven and seconded by Mr. Rohrbaugh, the BZA noted that due notice and hearing as required by the Code of Virginia Section 1.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to grant the special permit, with the following findings and conditions:

1. The proposed use will not adversely affect the use or development of neighboring properties.
2. The proposed use is in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully set forth.
3. The use will be compatible with the neighborhood in which it is to be located.
4. The application does comply with the specific standards for an increase in height as set forth in Section 5-2401, which sections are incorporated in this Motion as if fully set forth.

The special permit is granted subject to the following condition:

1. The design of the house shall be generally as shown on the plans submitted with the application for special permit.

The motion carried unanimously.

VARIANCE #52540, PAMELA E. DIXON (OWNER)

Applicant is requesting a 13.5 foot variance from the side property setback for an existing detached garage, PIN #7849-57-9868, located at 10734 Brent Town Road, Cedar Run District, Catlett, Virginia.

Mr. Hodge stated that a BZA site visit was made earlier today, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes. He noted that a survey of the property shows the detached garage to be 11.9' instead of 11.5' from the side property line; therefore, the required variance is actually 13.1', rather than 13.5' as stated on the application.

Ms. Dixon, applicant, appeared at the meeting and noted agreement with the staff report. Ms. Dixon stated that she bought the property with the building, which is a storage building, in place.

Mr. Meadows asked Mr. Hodge if this building is to be used as a detached garage and storage; he noted that the building appeared to be used as a barn or stable, which require an even greater setback of 100' from the property line. Mr. Hodge suggested that a condition be placed that no livestock, hay, or feed would be stored at any time in the building, to assure its use as a garage/shed rather than barn/stable.

On motion made by Mr. Lofdahl and seconded by Mr. Meadows, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to approve the variance, with the following findings and conditions:

1. The property was acquired in good faith; and
2. Strict application of the Ordinance would effectively prohibit or unreasonably restrict use of the property because the building would have to be moved.
3. The granting of the variance will alleviate a clearly demonstrable hardship approaching confiscating, and is distinguished from a special privilege or convenience sought by the applicant.
4. The variance will be in harmony with the intended spirit and purpose of the Ordinance, and would result in substantial justice being done.
5. The strict application of the Ordinance will produce undue hardship.
6. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity and is not of so general or recurring a nature as to make reasonably practical the formation of a general regulation to be adopted as amendment to the Ordinance.
7. The authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
8. The minimum variance that is necessary to afford relief is 13.1'.
9. The variance is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:
 - (a) Livestock, feed, or hay shall not be stored in this building at any time.

The motion carried unanimously.

On a motion made by Mr. Tufts and seconded by Mr. Meadows, the BZA voted to amend the motion to grant the variance, to include the following findings and conditions:

1. It is established that such noncompliance was through no fault of the applicant or was the result of an error in the location of the building subsequent to the issuance of the Building Permit, and
2. Such variance will not impair the purpose and intent of this Ordinance, and
3. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
4. It will not create an unsafe condition with respect to other property and/or public streets, and
5. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.

The motion carried unanimously.

SPECIAL PERMIT #52547, SUL SONG FOUNDATION, INC. (OWNERS)

Applicants are requesting special permit approval to locate a place of worship, PIN #6969-04-5051, located at 4478 Free State Road, Marshall District, Marshall, Virginia.

Mr. Hodge stated that a BZA site visit was attempted earlier today but that the vehicle was only able to get partially up the driveway because of some construction on the driveway. Mr. Hodge reviewed the staff report, a copy of which is attached to and made a part of the minutes. He noted that site plan approval would be necessary in addition to the special permit.

Mr. James Downey, representing the applicants, noted agreement with the staff report. Mr. Downey stated that the building was a private home dating back around 40 years ago. Mr. Lofdahl stated concern with the setback. Staff noted that the building met setback requirements.

Ms. Jeanette Payne, adjoining property owner, stated that the applicants have been very fine neighbors so far. However, she expressed concerns about the pond on the site, which the previous owners had built and which they sometimes dammed creating problems along Carter's Run. Mrs. Payne also stated her concern about traffic and children getting off the school bus. Ms. Mailler asked Ms. Payne if the issue was sight distance. Ms. Payne agreed. Ms. Mailler stated that would be addressed in the site plan. Mr. Hodge stated that VDOT would set the standards for the driveway entrance.

Ms. Mailler asked if anyone could address the pond issue. Mr. Kim stated that a lot of mud was building up in the pond, and that they were trying to clean it up. Ms. Mailler asked if it was mud clogging the run. Ms. Payne stated no, that the prior owners had dammed the run during periods when water was low to maintain the pond, affecting Carter's Run downstream.

Ms. Johnson, Zoning Administrator, stated that technical staff could certainly take a look at the pond and drainage issue, if the neighbors have concerns. Even if the pond was built pursuant to County requirements, the engineer could take a look at it and at neighbor concerns, and could make suggestions to the applicant about resolving problems.

Mr. Meadows stated that this application is for a special permit for the place of worship. He stated that the pond discussion is not relative to the special permit.

Mr. Lofdahl asked Mr. Hodge if a site plan would be required. Mr. Hodge stated yes, but was not sure if it would be a major or minor site plan. Mr. Hodge also stated that the applicants would need to get approval from the Health Department and VDOT. Mr. Lofdahl noted that the existing drainfield was for a three bedroom home. Mr. Meadows stated that John Marshall Soil and Water Conservation District would be the governing body over the pond.

Mr. Meadows stated that Mr. Downey referred to their being two different types of congregations, one being meditation and one being an outreach. Mr. Meadows asked what type of congregation this one was. Mr. Park stated that it was a small type of group meeting called Zen, with a meditation focus.

Mr. Rohrbaugh asked if there was a limit on the number of people attending at any given time. Mr. Meadows stated that applications stated that the facility could accommodate 20-30 members for its sessions. Ms. Johnson stated that the application was binding, but it would be appropriate to specify the number of attendees as a condition if the Board had concerns.

Ms. Mailler asked if the current drainfield would be adequate. Mr. Tufts stated that the Health Department would decide that. Mr. Hodge stated that at the time they make application for the site plan, the applicants would need to contact the Health Department and get their approval as well as VDOT.

Mr. Hunter Payne, adjoining property owner, stated that the Board went by his property. He asked the Board if they'd notice dirt being moved in the area, and stated that Grace Bible Church was building a place of worship in the immediate area, with a projected membership of about 275. Mr. Payne expressed concerns about the traffic this additional place of worship would generate in addition to the Grace Bible traffic.

On a motion made by Mr. VanLuven and seconded by Mr. Meadows, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to grant the special permit, with the following findings and conditions:

1. The proposed use will not adversely affect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully set forth.
3. The use will be compatible with the neighborhood in which it is to be located.

4. The application does comply with the specific standards set forth in Section 5-601 for all Category 6 uses and in Section 5-602 for all places of worship, which sections are incorporated in this motion as if fully set forth.

The special permit is granted subject to the following deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. All services shall occur within the existing building.
2. Use is subject to site plan approval.
3. Attendance shall not exceed thirty (30) people.

The motion carried unanimously.

Pursuant to Section 2.1-344(a)(7) of the Code of Virginia, Mr. Tufts moved to go into a closed meeting for the purpose of consultation with legal counsel pertaining to specific legal matters requiring the provision of legal advice by counsel relating to upcoming litigation cases. The motion carried unanimously.

The BZA held a Closed Meeting.

The Fauquier County Board of Zoning Appeals, having adjourned into Closed Meeting this day for the purposes stated in the resolution authorizing such Session, does hereby certify that to the best of each member's knowledge (I) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act, and (II) only such public business matters as were identified in the motion by which the Closed Meeting was convened, were heard, discussed or considered in the Closed Meeting.

This certification shall be recorded in the minutes of the Board of Zoning Appeals on motion of Mr. Tufts, seconded by Mr. Lofdahl.

AYES: Mrs. Mailler, Mr. Lofdahl, Mr. Meadows, Mr. VanLuven, Mr. Tufts, and Mr. Rohrbaugh.

NAYS: None

ABSTENTION: None

ABSENT: Ms. Addison

BZA TRAINING: Ms. Dotson reminded the Board of Zoning Appeals of the training session with the County Attorney's Office is scheduled for November 7, 2003, 10:00am – 2:00pm in the 4th Floor Conference Room at 40 Culpeper Street, Warrenton, Virginia.

ADJOURMENT: There being no further business before the Board, the meeting adjourned at 3:07pm.

Margaret Mailler, Chairman

John Meadows, Secretary

Copies of all files and materials presented to the Board are attached to and become a part of these minutes. A recording of the meeting is on file for one year.